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13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**

15 JOHN CASTORINA, individually
16 and on behalf of all others similarly
17 situated,

18 Plaintiff,

19 v.

20 BANK OF AMERICA, N.A. and
21 INTEGON NATIONAL INSURANCE
22 COMPANY,

23 Defendants.

Case No. 2:21-CV-02004-WBS-KJN

**DEFENDANT INTEGON NATIONAL
INSURANCE COMPANY'S NOTICE OF
MOTION AND MOTION TO DISMISS
PLAINTIFF'S COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

*[Filed concurrently with [Proposed] Order Granting
Motion to Dismiss]*

Date: April 18, 2022
Time: 1:30 p.m.
Judge: Hon. William B. Shubb
Dept.: Courtroom 5

1 **NOTICE OF MOTION AND MOTION**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that on April 18, 2022 at 1:30 p.m., or as soon thereafter as this
4 matter can be heard, in the Courtroom of the Honorable William B. Shubb (Courtroom 5) of the above-
5 entitled Court, located at 501 I Street, Suite 4-200, 14th Floor, Sacramento, California, 95814,
6 Defendant Integon National Insurance Company ("Integon"), will, and hereby does, move the Court,
7 pursuant to Federal Rule of Civil Procedure 12(b)(6), for an order dismissing the claims which Plaintiff
8 John Castorina has asserted against it.

9 This Motion is based upon this Notice of Motion, the accompanying Memorandum of Points
10 and Authorities, and all pleadings, papers, and documents on file herein, and any other written or oral
11 submissions that may be presented at or before the hearing on this Motion.

12
13 Dated: March 7, 2022

Respectfully submitted,

14 WINSTON & STRAWN LLP

15
16 By: 

Margaret E. Dayton

17 *Attorneys for Defendant*

18 INTEGON NATIONAL INSURANCE
19 COMPANY
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff John Castorina's sprawling Complaint alleges only two claims for civil RICO
4 violations against Defendant Integon National Insurance Company ("Integon"). Despite the
5 Complaint's length, the RICO claims are devoid of supporting factual allegations. Plaintiff does not
6 sufficiently allege the elements of a RICO claim: he does not allege a RICO enterprise; he fails to
7 allege predicate acts with Federal Rule of Civil Procedure¹ 9(b)'s required particularity; and he does
8 not demonstrate causation or cognizable damages.

9 In addition to these pleading deficiencies, Plaintiff's RICO claims suffer from fundamental
10 and incurable defects.

11 First, Plaintiff cannot plausibly allege that Bank of America, N.A. ("BANA") and Integon
12 had an intent to defraud or a common purpose to force Plaintiff to pay for "inflated" lender-placed
13 insurance ("LPI"). Defendants disclosed that LPI may be "significantly more expensive" and "may
14 not provide as much coverage" as an insurance policy that Plaintiff could buy for himself, and that
15 BANA may receive compensation in connection with LPI. Indeed, Defendants "strongly
16 encourage[d] [Plaintiff] not to rely on Lender-Placed Insurance."² As other courts have noted when
17 dismissing nearly identical RICO claims, such disclosures are "incompatible with allegations of a
18 scheme intended to deceive."³ "Letters that warn of an imminent bad deal and urge one to seek
19 better," cannot possibly be calculated to deceive anyone.⁴

20 Second, courts regularly dismiss attempts to expand the reach of the RICO statute to
21 encompass mere commercial or contractual disputes like this one. To hold otherwise would allow
22

23 ¹ Unless otherwise indicated, any reference to a "Rule" is to the Federal Rules of Civil Procedure.

24 ² Dkt. # 1-1 (Ex. B) at p. 15.

25 ³ See *Meyer v. One West Bank, F.S.B.*, 91 F.Supp.3d 1177, 1184-85 (C.D. Cal. 2015) (dismissing
26 RICO claim based on "scheme" to pay "kickbacks" to servicer for LPI where disclosures stated that
27 LPI might be more expensive and that servicer might receive compensation); *Gustafson v. BAC*
Home Loans Serv., LP, No. SACV 11-915-JST (ANx), 2012 WL 7051318, at *7 (C.D. Cal. Dec. 20,
2012) (dismissing RICO claim based on failure to disclose the "reasons for high cost of" LPI where
disclosures stated that LPI might be more expensive and that servicer might receive compensation).

28 ⁴ See *Gustafson*, 2012 WL 7051318, at *7 (citation omitted).

1 civil RICO law, already a behemoth, to swallow state civil and criminal law whole.⁵

2 As set forth fully below, Plaintiff's RICO claims fail to satisfy Rule 8's plausibility
3 requirement and Rule 9(b)'s particularity requirement. Dismissal with prejudice is required.

4 **II. SUMMARY OF RELEVANT ALLEGATIONS AS TO INTEGON⁶**

5 **A. Plaintiff's Allegations Regarding LPI**

6 Integon provides LPI for properties in BANA's loan portfolio when the individual borrower
7 fails to maintain hazard insurance on the mortgaged property. (Compl. ¶¶ 112-114.) Plaintiff alleges
8 that pursuant to Integon's contractual arrangement with BANA, Integon "automatically tracked"
9 BANA's loan servicing portfolio "to identify when an individual borrower's voluntary policy had
10 lapse[d]." (*Id.* ¶ 112.) "Once a lapse is identified, an automated cycle of notices" issues "to inform
11 [the borrower] that insurance will be purchased and force-placed if evidence of voluntary coverage is
12 not produced and continued." (*Id.* ¶ 114.) "If a lapse continues or the borrower does not provide
13 evidence of acceptable coverage in the requisite amount time, the borrower is notified that insurance
14 is being force-placed at his or her expense," (*id.*) and "[i]nsurance is automatically placed on the
15 property," (*id.* ¶ 115).

16 Plaintiff alleges the letters and notices to borrowers regarding LPI "disclose to the borrower
17 that [BANA] may earn commissions or compensation as a result of the forced placement of new
18 coverage." (Compl. ¶ 119; *id.* ¶ 227.c.) And, the April 19, 2021 LPI Notice attached to Plaintiff's
19 Complaint as Exhibit B repeatedly discloses that LPI "[m]ay be significantly more expensive" and
20 "[m]ay not provide as much coverage" as an insurance policy that a borrower can buy for himself or
21 herself. (Dkt. # 1-1 (Ex. B) at pp. 12, 15, 16.) The LPI Notice "strongly encourage[s] [the borrower]
22 not to rely on Lender-Placed Insurance." (*Id.* at p. 15.)

23 _____
24 ⁵ See, e.g., *Vega v. Ocwen Fin. Corp.*, No. 2:14-cv-04408-ODW (PLAx), 2015 WL 1383241, at *12-
25 *13 (C.D. Cal. Mar. 24, 2015) (dismissing RICO claim based on failure to disclose that property
26 inspections were "unnecessary" in alleged breach of the mortgage agreement); *Manos v. MTC Fin.,*
Inc., No. 16-01142-CJC (KESx), 2018 WL 6220051, at *7 (C.D. Cal. Apr. 2, 2018) ("*Manos II*")
(dismissing RICO claim based on failure to disclose that allegedly impermissible fees were
unauthorized by the contract).

27 ⁶ Integon sets out the allegations of Plaintiff's Complaint and accepts them as true only for the
28 purposes of this Motion. Integon reserves its right to challenge the veracity and accuracy of
Plaintiff's allegations at the appropriate time.

1 Plaintiff's mortgage "required him to secure and pay for adequate property insurance that
2 protected the Property against loss due to hazards." (Compl. ¶ 132; Dkt. # 1-1 (Ex. A) at pp. 4-5.)
3 Plaintiff admits his hazard insurance lapsed, and LPI was placed on his property. (Compl. ¶ 143.)
4 Plaintiff does not contest BANA's right to have placed LPI on his property.

5 **B. Plaintiff's RICO Claims**

6 Plaintiff asserts only two claims against Integon, Count V for violation of 18 U.S.C. §
7 1962(c), a substantive RICO claim, and Count VI for violation of 18 U.S.C. § 1962(d), a conspiracy
8 RICO claim. With no factual support, the RICO claims allege that Integon and BANA comprised a
9 RICO enterprise that engaged in a scheme to defraud Plaintiff to pay inflated amounts for LPI and
10 conceal from Plaintiff that such amounts included "kickbacks" and "other costs paid as bribes" to
11 BANA. (Compl. ¶¶ 144-146, 232.) Plaintiff alleges that the "common purpose" of the scheme was to
12 "forc[e] Plaintiff and the class members to pay inflated amounts for forced-placed insurance." (*Id.* ¶
13 224.) Plaintiff alleges predicate acts of "numerous and repeated violations of federal mail and wire
14 fraud statutes," which are not specified in the Complaint. (*Id.* ¶ 226.) Plaintiff generically alleges
15 that while Defendants disclosed "force-placed insurance would be 'significantly more expensive,'"
16 Defendants failed to disclose *why* force-placed insurance would be more expensive. (*Id.* ¶¶ 234, 144-
17 46, 232, 235.) This purported "omission" forms the basis of Plaintiff's fraud-based RICO claims.
18 (*Id.*) Plaintiff claims damages "in the form of unreasonably high force-placed insurance premiums"
19 that he would not have paid or would have contested. (*Id.* ¶¶ 237-38.)

20 As set forth below, Plaintiff's conclusory RICO allegations are devoid of supporting factual
21 allegations and contradicted by Defendants' disclosures, which are alleged in and attached to the
22 Complaint.

23 **III. ARGUMENT**

24 **A. Legal Standard**

25 Dismissal is warranted when a complaint does not contain sufficient factual matter, accepted
26 as true, to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678
27 (2009). The Court should not credit "[t]hreadbare recitals of the elements of a cause of action,
28 supported by mere conclusory statements." *Id.*; *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

1 And statements that “do nothing more than state a legal conclusion” are inadequate. *Moss v. U.S. Secret*
2 *Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). In addition, claims that “sound in fraud” must meet the
3 heightened pleading requirements of Rule 9(b). *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th
4 Cir. 2009).

5 Although a motion to dismiss may be granted with leave to amend, leave to amend is not
6 required where any “amendment would be futile or where the amended complaint would be subject to
7 dismissal.” *Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991) (internal citation omitted).

8 **B. Count V Must Be Dismissed Because It Fails To Adequately Allege a RICO**
9 **Violation Under 18 U.S.C. § 1962(c)**

10 To state a claim under Section 1962(c), Plaintiff must allege “(1) conduct (2) of an enterprise
11 (3) through a pattern (4) of racketeering activity” that was a “but for” and proximate cause of
12 Plaintiff’s injury. *Meyer*, 91 F.Supp.3d at 1182. And, where the alleged predicate acts are mail and
13 wire fraud, a complaint must satisfy Rule 9(b)’s heightened pleading requirements. *See Schreiber*
14 *Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1399-1400 (9th Cir. 1986). Rule 9(b)
15 requires that Plaintiff allege “the time, place, and specific content of the false representations as well
16 as the identities of the parties to the misrepresentations.” *Gustafson*, 2012 WL 7051318, at *3.
17 Furthermore, “[t]he plaintiff must set forth what is false or misleading about a statement and why it
18 is false.” *Id.* at *5.

19 As set forth below, Plaintiff’s substantive RICO claim fails to satisfy Rule 9(b) and the
20 statute’s rigorous pleading requirements for multiple reasons.

21 **i. Plaintiff Fails To Allege a RICO Enterprise**

22 Plaintiff fails to sufficiently allege a RICO enterprise, as one court found when another
23 plaintiff asserted nearly identical claims against BANA. In *Cirino v. Bank of America, N.A.*, the
24 plaintiff claimed that BANA and a property-inspections vendor, Safeguard Properties LLC,
25 comprised an “enterprise” for RICO purposes, alleging that the two entities “associated together for
26 the common purpose of routinely, and repeatedly, ordering and conducting inspections on delinquent
27 borrowers’ properties, without regard to the necessity or reasonableness of the inspections.” No. 13-
28 cv-8829 PSG (MRWx), 2015 WL 3669078, at *4 (C.D. Cal. Feb. 10, 2015). In rejecting that theory,

1 the court reasoned that although the plaintiff had alleged generally that the enterprise's common
2 purpose was to conduct inspections on properties that should not have been inspected, and thus to
3 effectuate an alleged fraud, the plaintiff failed to allege facts that would render this theory plausible.
4 *Id.* For instance, the plaintiff did "not allege that the vendors were involved in deciding when or why
5 to conduct inspections." *Id.* Instead, the plaintiff alleged that the vendor comes "into play when
6 Defendants' automated loan management system orders inspections of all properties that have been
7 delinquent for a specified number of days." *Id.* Accordingly, the complaint did not "support[] that
8 the vendors associated with [BANA] for the common purpose of conducting *unnecessary* or
9 *unreasonable* property inspections; instead, the facts only suggest[ed] that the vendors associated
10 with [BANA] to conduct the property inspections requested (electronically and without elucidation)
11 by [BANA]." *Id.* at *5 (emphasis in original).

12 The same rationale applies to the LPI context here. As with the plaintiff in *Cirino*, Plaintiff
13 generally alleges that BANA and Integon associated to make Plaintiff "pay inflated amounts for
14 forced-placed insurance through a scheme that inflated such amounts to cover kickbacks and
15 expenses," (Compl. ¶ 224), but allegations elsewhere in the Complaint contradict this bald assertion.
16 For example, Plaintiff alleges that Integon "automatically tracked" BANA's loan servicing portfolio
17 "to identify when an individual borrower's voluntary policy lapse[d]." (*Id.* ¶ 112.) "Once a lapse is
18 identified, an automated cycle of notices" issues, (*id.* ¶ 114), and "[i]nsurance is automatically
19 placed on the property," (*id.* ¶ 115). As in *Cirino*, these facts do not point to a wrongful common
20 purpose between BANA and Integon, only that they associated to place LPI on the property
21 automatically in the event of a lapse in coverage. *See Cirino*, 2015 WL 3669078, at *5; (*see* Compl.
22 ¶¶ 112-15.) Nor do Plaintiff's allegations support any contention that Integon was involved in
23 deciding when or why to apply LPI, further belying any wrongful common purpose. Given the same
24 lack of an alleged common purpose as in *Cirino*, the Court should dismiss Plaintiff's RICO claim for
25 failure to allege a RICO enterprise.

26 ///

27 ///

28 ///

1 **ii. Plaintiff Fails To Allege Two Predicate Acts With Particularity and Fails**
2 **to Plausibly Indicate How Any Communication Was Misleading, As**
3 **Required By Rule 9(b)**

4 “Where RICO is asserted against multiple defendants, a plaintiff must allege at least two
5 predicate acts by *each* defendant.” *In re Wellpoint, Inc. Out-of-Network UCR Rates Litig.*, 865
6 F.Supp.2d 1002, 1035 (C.D. Cal. 2011) (emphasis original). And where, as here, Plaintiff’s RICO
7 claims are based on alleged mail and wire fraud, (Compl. ¶¶ 222, 226, 237), the predicate acts must
8 be alleged with particularity under Rule 9(b)’s heightened pleading requirements. *Schreiber*, 806
9 F.2d at 1399-1400. The Complaint fails to sufficiently allege the required predicate acts.

10 First, in support of the substantive RICO claim, the Complaint identifies ***only one specific***
11 ***communication***, an April 19, 2021 LPI Notice, sent through U.S. mail.⁷ (Compl. ¶¶ 233, 235; Dkt. #
12 1-1 (Ex. B).) But a single predicate act fails to state a RICO claim under well-settled law. *In re*
13 *WellPoint*, 865 F.Supp.2d at 1035; *Medallion Television Enters., Inc. v. SelecTV of Cal., Inc.*, 833
14 F.2d 1360, 1365 (9th Cir. 1987) (holding that RICO claims fail when they are applied to a single,
15 isolated transaction). Plaintiff’s conclusory allegations that there were “numerous” mail and wire
16 communications, (Compl. ¶¶ 222, 237), cannot salvage the deficient RICO claim. These factually
17 unsupported allegations fail to satisfy Rule 8’s pleading requirements, much less the exacting
18 standard of Rule 9(b). *See Iqbal*, 556 U.S. at 677-79; *Twombly*, 550 U.S. at 555; *Manos v. MTC Fin.,*
19 *Inc.*, No. 16-01142-CJC (KESx), 2017 WL 8236356, at *10 (C.D. Cal. Dec. 21, 2017) (“*Manos I*”).
20 Because Plaintiff identifies the time, place, and content of only one alleged predicate act, dismissal is
21 required for this reason alone. *See In re WellPoint*, 865 F.Supp.2d at 1035.

22 Nor are the allegations concerning the April 19 LPI Notice sufficient to allege a predicate act
23 of mail fraud under Rule 9(b). The Complaint fails to plausibly indicate *how* the April 19 LPI Notice
24

25 ⁷ Plaintiff also attaches a June 10, 2021 mortgage statement to his Complaint as Exhibit C. The June
26 10 mortgage statement relates to Plaintiff’s claims against BANA regarding property inspections,
27 not LPI. (*See* Compl. ¶¶ 139, 140.) The charging allegations of the RICO claim do not reference this
28 June mortgage statement – or any mortgage statement – as communications relevant to the RICO
“scheme.” Plaintiff also does not identify any specific statement in the June 10 mortgage statement
that is fraudulent nor contend that Integon had any role in the preparation or transmission of
mortgage statements. (*See id.* ¶¶ 221-39 (referencing “letters” and “insurance notices”).)

1 is false or misleading. The Complaint claims that the April 19 LPI Notice is misleading by informing
2 Plaintiff that “force-placed insurance would be ‘significantly more expensive’” without disclosing
3 *why* force-placed insurance would be more expensive. (Compl. ¶ 234.) Plaintiff alleges no facts as to
4 how this alleged omission is material – especially in light of the LPI Notice’s disclosure that LPI
5 “may not provide as much coverage as hazard insurance you can buy yourself,” (Dkt. # 1-1 (Ex. B)
6 at p. 15), and Defendants’ disclosures that “BANA may earn commissions or compensation as a
7 result of the forced placement of new coverage,” (Compl. ¶ 119). *See, e.g., Gustafson*, 2021 WL
8 7051318, at *7 (“the Court fails to see how Defendants’ failure to inform Plaintiffs and class
9 members that forced-placed insurance practices also generate profits for Defendants is a material
10 omission”). Nor can this alleged omission form the basis of Plaintiff’s RICO claim. Plaintiff baldly
11 alleges that “Defendants had a duty to fully disclose the reasons why force-placed insurance would
12 cost significantly more,” (Compl. ¶ 234), but Plaintiff does not allege a legal or factual basis for such
13 a duty. “Absent an independent legal duty, such as a fiduciary duty or an explicit statutory duty,
14 failure to disclose cannot be the basis of a RICO fraudulent scheme.” *Manos II*, 2018 WL 6220051,
15 at *6 (dismissing civil RICO claim premised on alleged failure to disclose the “true nature” of
16 mortgage servicer’s fees) (quoting *Eller v. EquiTrust Life Ins. Co.*, 778 F.3d 1089, 1092 (9th Cir.
17 2015)).

18 The Complaint concedes that the April 19 LPI Notice truly discloses that LPI was purchased
19 and that Plaintiff would be charged the premium, which “may be significantly more expensive” and
20 “may not provide as much coverage” as insurance that Plaintiff could buy himself. (Dkt. #1-1 (Ex.
21 B) at pp. 12, 15, 16.) The Complaint does not plausibly identify how this disclosure to Plaintiff is
22 false or misleading.⁸

23 In short, the Complaint identifies only one communication and fails to indicate what is

24 ⁸ The Complaint also alleges that Defendants misrepresent that the borrower would be charged “the
25 cost of the insurance,” “when in fact such amounts also included kickbacks and other costs paid as
26 bribes to [BANA].” (Compl. ¶ 232.) Accordingly, the gravamen of this alleged misrepresentation is
27 also the failure to disclose that the LPI premiums allegedly included kickbacks. In any event,
28 Plaintiff does not specifically identify the communication containing this alleged misrepresentation.
However, Plaintiff’s mortgage agreement permits BANA to charge “[a]ny amounts disbursed by the
Lender,” (Dkt. #1-1 (Ex. A) at p. 5), not the cost of the insurance to BANA, and the April 19 LPI
Notice states the borrower will be charged the amount of the premium, (Dkt. #1-1 (Ex. B) at p. 16),
not the cost of the insurance to BANA.

1 materially false or misleading about it. This is insufficient to satisfy Rule 9(b) and adequately allege
2 two predicate acts of mail and wire fraud for each defendant under civil RICO. *See Manos I*, 2017
3 WL 8236356, at *10 (dismissing RICO claim “predicated on Defendants’ alleged ‘kickback’ scheme
4 in the purchase of LPI” where the “loan expressly authorized the purchase of LPI and the charging
5 of premiums” to the plaintiff, and complaint “lack[ed] the requisite time, place, and specific content
6 of the false representations or omissions”).

7 **iii. Plaintiff Does Not Allege a Plausible Intent to Defraud**

8 Plaintiff generically alleges that Defendants made omissions and misrepresentations in letters
9 and notices to Plaintiff with the intent to deceive Plaintiff into paying inflated amounts for LPI
10 and/or prevent Plaintiff from contesting the charges for LPI. (Compl. ¶¶ 224, 231-237.) According to
11 the Complaint and its attachments, the notices and letters made the following disclosures regarding
12 LPI:

- 13 • “[LPI] [m]ay be significantly more expensive than insurance you can buy yourself.”
14 (Dkt. #1-1 (Ex. B) at pp. 12, 16.)
- 15 • “[LPI] [m]ay not provide as much coverage as an insurance policy you buy yourself.”
16 (*Id.*)
- 17 • “[BANA] may earn commissions or compensation as a result of the forced placement
18 of new coverage.” (Compl. ¶ 119.)
- 19 • “Lender-Placed Insurance may be significantly more expensive and may not provide
20 as much coverage as hazard insurance you can buy yourself, and we strongly
21 encourage you not to rely on Lender-Placed Insurance.” (Dkt. #1-1 (Ex. B) at p. 15.)

22 “[L]etters that warn of an imminent bad deal and urge one to seek better,” cannot possibly be
23 calculated to deceive anyone. *See Gustafson*, 2012 WL 7051318, at *7 (citation omitted). Indeed,
24 such disclosures are “incompatible with allegations of a scheme intended to deceive.” *See Meyer*, 91
25 F.Supp.3d at 1184-85 (dismissing RICO claim based on “scheme” to pay “kickbacks” to servicer for
26 LPI where disclosures stated that LPI might be more expensive and that servicer might receive
27 compensation); *Gustafson*, 2012 WL 7051318, at *7 (dismissing RICO claim based on failure to
28 disclose the “reasons for high cost of” LPI where disclosures stated that LPI might be more

1 expensive and that servicer might receive compensation).

2 Here, Plaintiff's generic allegation that Defendants had an "intent to defraud and deceive,"
3 (Compl. ¶ 231), is incompatible with the disclosures in the letters and notices. And, specifically,
4 Plaintiff's claim that Defendants' "common purpose" was to force Plaintiff's to pay for "inflated"
5 LPI to "maximize their revenues" is refuted by Defendants' statement encouraging Plaintiffs "**not to**
6 **rely on Lender-Placed Insurance.**" (Dkt. #1-1 (Ex. B) at p. 15 (emphasis added).) Accordingly,
7 dismissal is appropriate. *See Meyer*, 91 F.Supp.3d at 1184-85; *Gustafson*, 2012 WL 7051318, at *7.

8 **iv. Plaintiff Cannot Allege Proximate Cause or Cognizable Damages**

9 Plaintiff's Complaint also fails to sufficiently allege causation and damages.

10 RICO requires Plaintiff to allege that his purported harm "was 'by reason of' the RICO
11 violation, which requires the plaintiff to establish proximate causation." *Canyon Cnty. v. Syngenta*
12 *Seeds, Inc.*, 519 F.3d 969, 972 (9th Cir. 2008). Here, the Complaint contains no factually supported
13 allegations that Plaintiff suffered harm to his business or property **as a result of** paying allegedly
14 "inflated amounts for forced-placed insurance." Any injury to Plaintiff's business or property (such
15 as his payment of the LPI premiums) actually resulted from his failure to maintain the insurance
16 coverage that his mortgage required. Indeed, the April 19 LPI Notice expressly states that LPI would
17 not be placed if Plaintiff provided proof of hazard insurance coverage, and the LPI would be
18 canceled for any period for which Plaintiff provided acceptable evidence of insurance. (Dkt. #1-1
19 (Ex. B) at p. 16.)

20 In addition, Plaintiff alleges that if he had known the premiums "included kickbacks and
21 other improper charges" Plaintiff would not have paid the premiums or would have contested them.
22 (Compl. ¶ 237.) However, the mortgage contract allows BANA to impose LPI and requires Plaintiff
23 to pay the premiums. (Dkt. #1-1 (Ex. A) at pp. 4-5.) Accordingly, Plaintiff's theory of damages
24 seems to be that if he had known about the "kickbacks" he would have breached his contractual duty
25 to pay. However, losing an opportunity to breach a contract cannot constitute a cognizable harm. *See*
26 *Cohen v. Am. Sec. Ins. Co.*, 735 F.3d 601, 614 (7th Cir. 2013) (affirming dismissal of fraud claim
27
28

1 based on alleged failure to disclose “kickbacks” included in LPI charges).⁹

2 **C. Count V Should Be Dismissed Because Plaintiff Improperly Seeks to Transform**
3 **His Breach of Contract Claim Against BANA Into a RICO Claim Against**
4 **Integon**

5 Finally, Plaintiff’s substantive RICO claim fails for the independent reason that it is based on
6 the same core facts as his breach of contract claim against BANA. (*Compare* Compl. ¶¶ 231-238
7 *with id.* ¶ 179.) Plaintiff alleges that BANA breached the mortgage agreement by charging Plaintiff
8 for “unnecessary and excessive” LPI and charging Plaintiff “more than the actual cost of the
9 insurance.” (*Id.* ¶ 179.) Under Plaintiff’s theory, if BANA charged Plaintiff an excessive amount for
10 LPI, BANA could be deemed to be in breach of the mortgage agreements. “A plaintiff cannot state a
11 claim under the Civil RICO statute ‘by simply artfully pleading what is essentially a breach of
12 contract claim.’” *Manos II*, 2018 WL 6220051, at *7. At its core, Plaintiff’s fraud theory is that
13 Defendants should have disclosed that BANA was breaching the mortgage agreements by
14 overcharging for LPI premiums. Courts routinely dismiss civil RICO claims where, as here, the
15 claims are just dressed-up attempts to assert a breach of contract. *See id.*; *Vega*, 2015 WL 1383241,
16 at *12 (dismissing RICO claim based on failure to disclose that property inspections were
17 “unnecessary” in alleged breach of the mortgage agreement); *cf. Royce Int’l Broad. Corp. v. Field*,
18 No. C 99-4169 SI, 2000 WL 236434, at *4 (N.D. Cal. Feb. 23, 2000) (dismissing civil RICO claim
19 because the “facts alleged in this contractual dispute are not the types of activities that RICO was
20 intended to eliminate . . . [and a]ny other interpretation would indefinitely expand the reach of the
21 RICO statute by permitting all allegations of ‘broken promises’ in failed business transactions to
22 constitute ‘racketeering activity’”). Plaintiff’s attempt to expand the reach of civil RICO liability to a
23 run-of-the-mill breach of contract claim fails as a matter of law.

24 ⁹ Throughout the Complaint, Plaintiff alleges that the LPI premiums are “unconscionably high,”
25 “exorbitant,” “inflated” and asserts that his damages are “unreasonably high force-placed insurance
26 premiums.” (*See, e.g.*, Compl. ¶¶ 2, 33, 82, 92, 224, 238.) To the extent that Plaintiff claims the LPI
27 premium rates are too high and that forms the basis of his RICO claims, that claim is precluded by
28 the filed-rate doctrine. *See MacKay v. Superior Court*, 188 Cal.App.4th 1427, 1448 (2010) (holding
that an insurance rate approved by the Department of Insurance may only be challenged
administratively); *Patel v. Specialized Loan Serv. LLC*, 183 F.Supp.3d 1238, 1244 (S.D. Fla. 2016)
aff’d, 904 F.3d 1314 (11th Cir. 2018) (dismissing all claims premised on allegations that insurer and
loan servicer “charged borrowers inflated premiums as a result of kickbacks”).

1 **D. Count VI Must Be Dismissed Because The Complaint Fails to Allege a Violation**
2 **of RICO to Support the Conspiracy Claim**

3 Count VI asserts a claim for conspiracy to commit a civil RICO violation under 18 U.S.C. §
4 1962(d). Because Plaintiff fails to state a substantive RICO violation in Count V (as set forth above),
5 Plaintiff's dependent claim for conspiracy to commit a civil RICO violation also fails. Therefore, the
6 Court should dismiss Count VI with prejudice. *Turner v. Cook*, 362 F.3d 1219, 1231 n.17 (9th Cir.
7 2004) ("Because appellants failed to allege the requisite substantive elements of a RICO claim under
8 18 U.S.C. § 1962(c), appellants' claim under 18 U.S.C. § 1962(d) . . . also fails.").

9 **IV. CONCLUSION**

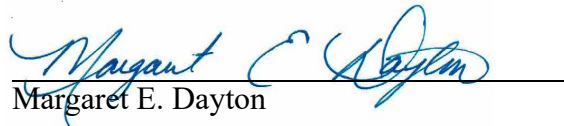
10 For the foregoing reasons, Integon respectfully requests that the Court dismiss Plaintiff's
11 claims against it, in their entirety and with prejudice.

12
13 Dated: March 7, 2022

Respectfully submitted,

14 WINSTON & STRAWN LLP

15
16 By:


Margaret E. Dayton

17 Attorneys for Defendant
18 INTEGON NATIONAL INSURANCE
19 COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed on March 7, 2022, with the Clerk of the Court using CM/ECF which caused a copy to be served on all counsel of record.

Dated: March 7, 2022

By: 
Margaret E. Dayton